

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUNIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, THOMAS BAKER
and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
“AZZMADOR” RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSLEY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS,
LEAGUE OF THE SOUTH, JEFF SCHOEP,
NATIONAL SOCIALIST MOVEMENT,
NATIONALIST FRONT, AUGUSTUS SOL
INVICTUS, FRATERNAL ORDER OF THE
ALT-KNIGHTS, MICHAEL “ENOC”
PEINOVICH, LOYAL WHITE KNIGHTS OF
THE KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

**SUPPLEMENTAL REPLY MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’
MOTION FOR SANCTIONS AGAINST DEFENDANT MATTHEW HEIMBACH**

Defendant Matthew Heimbach's opposition to Plaintiffs' motion for sanctions, ECF 1054 ("Opp."), is conspicuously short on factual and legal citations but long on invective toward Plaintiffs' counsel. Many of the legal and factual errors in the opposition are addressed in Plaintiffs' initial filing, ECF 1006, so we will not belabor them here. We write to correct the record with respect to two particular misrepresentations.

First, Heimbach asserts that "*Plaintiffs took only one deposition of Matthew*," arguing, erroneously, that Plaintiffs "fail[ed] to first avail themselves fully of the less drastic sanctions imposed by the Court," which Heimbach further claimed "appear[ed] to be a pattern of behavior by Plaintiffs." Opp. at 6-7 (emphasis in original). In fact, Plaintiffs took Heimbach's deposition *twice*: first on August 9, 2019, after the Court ordered Heimbach to sit for a deposition "devoted exclusively to ... discovery," ECF 508 at 4, and then again on June 3, 2020, all as part of a longstanding effort by Plaintiffs to recover as much discoverable information as possible following Heimbach's wholesale document destruction. As detailed in Plaintiffs' initial filing, Plaintiffs reiterated their request for evidentiary sanctions only after the full scope of Heimbach's extensive spoliation was revealed.

Second, Heimbach dramatically understates the extent of the prejudice Plaintiffs have suffered from Heimbach's failure to provide even a single text message in this case due to the suspicious disappearance of each of the two cell phones he used to communicate about the events at issue. Heimbach claims, without citation, that "Plaintiffs specifically complain about two outgoing text messages from Michael Tubbs to Matthew." Opp. at 16. However, he ignores entirely the far more salient fact that Plaintiffs never received a single text message between Heimbach and multiple other co-Defendants, including his best friend and primary co-conspirator Matthew Parrott, who conveniently also deleted all of his text messages with Heimbach after

receiving document requests in this case. *See* ECF 1006-4, Ex. 3 (Parrott Dep. Tr.) at 285:9-289:10. As detailed in Plaintiffs' supplemental brief, ECF 1006, this alone warrants adverse inferences, even though it represents only a fraction of the numerous sources of documents that Heimbach destroyed or failed to preserve.

Date: September 16, 2021

Respectfully submitted,



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CERTIFICATE OF SERVICE

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I hereby certify that on September 16, 2021, I also served the following non-ECF participants via mail and electronic mail:

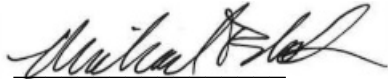
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